

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

FaceTec, Inc.,

Plaintiff,

vs.

iProov, Ltd.,

Defendant.

Case No. 2:21-CV-02252-ART-BNW

ORDER DENYING PLAINTIFF'S
OBJECTION TO MAGISTRATE
JUDGE ORDER AND MOTION FOR
STAY (ECF Nos. 143, 158)

iProov, Ltd.,

Counter-Claimant,

vs.

FaceTec, Inc.,

Counter-Defendant.

Before the Court is Plaintiff FaceTec, Inc.'s objection (ECF No. 143) to Magistrate Judge Weksler's order (ECF No. 141) granting in part Defendant iProov's motion to compel (ECF No. 117). For the reasons outlined below, the Court OVERRULES Defendant's objections.

I. Standard of Review

Magistrate judges are authorized to resolve pretrial matters subject to district court review under a "clearly erroneous or contrary to law" standard. 28 U.S.C. § 636(b)(1)(A); *see also* Fed. R. Civ. P. 72(a); LR IB 3-1(a). A district court will thus defer to a magistrate judge's nondispositive order unless it is clearly erroneous or contrary to law. *Grimes v. City & Cnty. of San Francisco*, 951 F.2d 236, 240 (9th Cir. 1991). "A finding is clearly erroneous when although there is evidence to support it, the reviewing body on the entire evidence is left with the definite and firm conviction that a mistake has been committed." 24-7 *Grp. of Companies, Inc. v. Roberts*, No. 3:13-CV-00211-MMD-WGC, 2014 WL 12707232,

1 at *2 (D. Nev. Nov. 21, 2014); (quoting *United States v. Ressam*, 593 F.3d 1095,
 2 1118 (9th Cir. 2010)). “A decision is ‘contrary to law’ if it applies an incorrect legal
 3 standard or fails to consider an element of the applicable standard.” *Id.* (quoting
 4 *Conant v. McCoffey*, C97-0139, 1998 WL 164946, at *2 (N.D.Cal. Mar.16, 1998)).

5 **II. Analysis**

6 Plaintiff FaceTec brings claims for patent infringement, breach of contract,
 7 and intentional interference with contract against Defendant iProov. Relevant to
 8 the instant motion, iProov sought revenue and transaction information related to
 9 FaceTec’s accused products through an interrogatory served on FaceTec.
 10 (Interrogatory No. 16, ECF No. 117-2). FaceTec responded, however, iProov
 11 argues that the responses are deficient and filed a motion to compel FaceTec to
 12 supplement its response to include revenues for the entirety of the accused
 13 FaceTec product (as opposed to revenues only for the Liveness & ID scan feature).
 14 (ECF No. 117.)¹

15 Magistrate Judge Weksler issued an order compelling FaceTec to
 16 supplement its responses to include revenue related to the accused FaceTec
 17 product, not just the Liveness & ID scan feature. Judge Weksler also found that
 18 FaceTec had not met its burden of showing why the information sought is not
 19 relevant or otherwise outside of the scope of discovery and noted that iProov had
 20 cited case law which suggests that this information is in fact relevant. FaceTec
 21 objected to Judge Weksler’s order, arguing that the order erred in requiring
 22 production of revenue information for non-infringing features of FaceTec’s
 23 product.

24 The Court agrees with Judge Weksler that FaceTec failed to meet its burden
 25 of showing that this discovery is not relevant. “Parties may obtain discovery

26
 27 ¹ Because iProov does not object to the other aspects of Judge Weksler’s order on
 28 the motion to compel, the Court does not discuss the facts or analysis of those
 issues here.

1 regarding any nonprivileged matter that is relevant to any party's claim or defense
 2 and proportional to the needs of the case. . ." Fed. R. Civ. P. 26(b)(1). The party
 3 resisting discovery has the heavy burden to show why discovery is not relevant.
 4 See *Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9th Cir. 1975). As Judge
 5 Weksler noted, FaceTec's opposition to the motion to compel did not put forth
 6 any real argument as to why the information sought is not relevant. Rather,
 7 FaceTec argued that the motion to compel seeks revenue information for
 8 admittedly non-infringing features of FaceTec's products and that it is suspicious
 9 of iProov's motivations. This brief argument did not suffice to show that the
 10 information sought is not relevant or otherwise outside of the scope of discovery.
 11 iProov's motion to compel cited two cases that suggest that revenue information
 12 for non-accused products is discoverable. *Positive Techs., Inc. v. Sony Elecs., Inc.*,
 13 2013 WL 707914 (N.D. Cal. Feb. 26, 2013); see also *Georgia Pac. Corp. v. U.S.*
 14 *Plywood Corp.*, 318 F. Supp. 1116 (S.D.N.Y. 1970), modified sub nom. *Georgia-*
 15 *Pac. Corp. v. U.S. Plywood-Champion Papers, Inc.*, 446 F.2d 295 (2d Cir. 1971).
 16 FaceTec's opposition to the motion to compel presented no analysis as to why
 17 these cases do not apply here.

18 **III. Conclusion**

19 It is therefore ordered that Plaintiff FaceTec's objection to Magistrate Judge
 20 Weksler's order (ECF No. 143) is OVERRULED.

21 It is further ordered that Plaintiff FaceTec's motion to stay responses to
 22 Interrogatory 16 pending a ruling on its objection (ECF No. 158) is DENIED AS
 23 MOOT.

24 Dated this 12th day of March 2025.

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 ANNE R. TRAUM
 UNITED STATES DISTRICT JUDGE